

1 UNITED STATES DISTRICT COURT

2 NORTHERN DISTRICT OF CALIFORNIA

3 Before The Honorable Thomas S. Hixson, Magistrate Judge

4  
5 EPIC GAMES, INC., )

6 Plaintiff, )

7 vs. )

Case No. C 20-05640-YGR

8 APPLE, INC., )

9 Defendant. )

10 San Francisco, California

11 Friday, December 20, 2024

12 TRANSCRIPT OF PROCEEDINGS OF THE OFFICIAL ELECTRONIC SOUND  
13 RECORDING 1:15 - 1:21 = 6 MINUTES

14 APPEARANCES:

15 For Plaintiff:

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BY: YONATAN EVEN, ESQ.

18 For Defendant:

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BY: MARK A. PERRY, ESQ.

21  
22 Transcribed by:

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1 Friday, December 20, 2024

1:15 p.m.

2 P-R-O-C-E-E-D-I-N-G-S

3 --oOo--

4 THE CLERK: We are here in civil action 20-5640,  
5 Epic Games, Inc., versus Apple, Inc. The Honorable Thomas  
6 S. Hixson presiding.

7 Counsel, please state your appearances for the record.  
8 Let's start with the Plaintiff's counsel.

9 MR. EVEN (via Zoom): Good afternoon, your Honor.  
10 Yonatan Even for Epic Games.

11 THE COURT: Good afternoon.

12 MR. PERRY (via Zoom): Good afternoon, your Honor.  
13 Mark Perry for Apple.

14 THE COURT: Good afternoon.

15 Let me turn to Epic. Please give me a status update.

16 MR. EVEN: Thank you, your Honor. So, where we  
17 are right now is that we have three special masters that  
18 have been appointed and onboarded. We had quite a long  
19 conversation with them last night about the protocol, et  
20 cetera, and I think we are all on the same page and they are  
21 ready to start their review.

22 We have a protocol that Epic has signed off on. Apple,  
23 I understand, is about to be signed off on, there's a couple  
24 of words and they're doing a final read. That will be filed  
25 with your Honor and we will need your Honor to sign off on

1 it.

2 The only thing that I -- we really need your approval  
3 of, is that we have an appeal process that implicates your  
4 Honor and all of the rest are things that I believe your  
5 Honor has heard before, in terms of the buckets and the  
6 protocol and the pace, et cetera.

7 Apple has committed to review at a click of about  
8 15,000 documents per week and to produce, every Monday,  
9 everything it has reviewed the prior week. We have worked  
10 out the details of how that production is going to go to the  
11 special masters, we believe to the special masters  
12 satisfaction, although we'll see on Monday whether they are,  
13 in fact, comfortable with it once we -- once the rubber  
14 meets the road.

15 We have worked out with them the formatting of -- or at  
16 least initial formatting -- of how they will provide us with  
17 their -- with their rulings.

18 We are in the process of providing them some of the  
19 underlying motion papers, which they asked to see, just to  
20 get a better understanding of the underlying dispute. And I  
21 believe we'll do that today.

22 And so, that is where we are on that front and we're  
23 really waiting for Monday to kickoff the process in earnest.

24 THE COURT: All right, thank you.

25 Let me turn to Apple. Please give me the status update

1 from your point of view.

2 MR. PERRY: Thank you, your Honor. Perhaps for  
3 the first time, I think I agree with everything Mr. Even  
4 just said, so we are moving forward and making progress. We  
5 do expect to finalize the protocol today and submit it to  
6 your Honor for review.

7 We did have a case management conference with Judge  
8 Gonzalez Rogers on Wednesday of this week. She has  
9 continued the trial for the resumption of the evidentiary  
10 hearing from January 13th until, at some point, later. And  
11 we have a further case management conference scheduled with  
12 her for January 14th. And she also scheduled a -- set a  
13 briefing schedule to complete the appeal of the December 2nd  
14 order.

15 We -- the review -- the re-review is underway. As  
16 these things do, it started out a little slow. We had the  
17 training and the questions and so forth. It's kicked into  
18 gear. It is now running at a clip of about 2,000 documents  
19 a day, yesterday and today. So we hope that will get to  
20 15,000. Maybe not Christmas day, but we're there.

21 I can give the Court a sense of the first batch, if  
22 it's of interest, or not. I mean, I don't know how much  
23 granularity the Court is interested in.

24 THE COURT: That would be helpful, yes.

25 MR. PERRY: So, we have a cutoff of Thursday --

1 this is all on a review platform. So we have to stop on  
2 Thursday to produce the production for the Monday to the  
3 special masters and we'll do that every week. So, through  
4 yesterday, at some -- the cutoff time -- I don't know what  
5 time that was, there were about 6,250 total documents  
6 reviewed. Mr. Even will be pleased to know we are  
7 downgrading about 4,000 of them, so a majority. We are  
8 maintaining privilege over approximately 800 of them and  
9 then the balance, whatever that is, is what we've been  
10 called "category two" of those documents that are subject to  
11 the December 2nd order.

12 So, special masters -- if the first batch is  
13 representative -- and I don't know if it is, your Honor. It  
14 is a -- my understanding is that it's essentially either  
15 numerical or a random selection. It wasn't -- wasn't picked  
16 in any particular way. I don't think the special masters  
17 will have to review 57,000 documents, I think is the good  
18 news. How many, we don't know, but I think we'll know  
19 probably the second go around, if the numbers stay about the  
20 same, and we'll get a pattern. But that's the first test  
21 run.

22 THE COURT: Thank you for the update. When do the  
23 parties expect that the proposed order will be filed for my  
24 signature?

25 MR. EVEN: We expect it will be filed today,

1 unless Mr. Perry has something else, but I -- that is at  
2 least our expectation on the Epic side.

3 MR. PERRY: And the Apple team is meeting, your  
4 Honor, just directly after this hearing to close the loop on  
5 that and a few other things, based on the special master  
6 discussion last night. We had a -- a panel meeting late  
7 last night and we haven't caught up on all of that yet with  
8 the full Apple team, but we have it scheduled for  
9 immediately after this hearing. So, I agree with Mr. Even,  
10 we expect to file it today.

11 THE COURT: All right. Thank you.

12 Let me ask the parties, should I set another status  
13 conference to check in? Do you think that would be helpful?  
14 First, let's turn to Epic. What do you think?

15 MR. EVEN: From my point of view, I do think that  
16 would be helpful. To complete one point that Mr. Perry  
17 mentioned, so Judge Gonzalez Rogers had at least tentatively  
18 suggested that the parties resume the hearings, either in  
19 the last week of January or the first week of February. We  
20 would like to get there, if possible. The numbers that Mr.  
21 Perry just disclosed are at least encouraging that we may be  
22 able to in fact do that. And so, my proposal would be that,  
23 unless the parties -- unless something happens next week,  
24 the parties will not file a status report next week, even  
25 though one is due, and instead the parties will file a

1 status report on the 2nd, and then if we can see your Honor  
2 again in two weeks time, by that time hopefully we will have  
3 two batches of documents from Apple, we will have some  
4 rulings, at least, because the special masters have  
5 suggested they will provide us with their rulings on a  
6 weekly -- in a weekly report, and we will have a better  
7 sense of where we are. And I think we'd like to have that  
8 scheduled, if possible, for your Honor's calendar.

9 THE COURT: So, I -- I gather you're proposing  
10 that the status report not be due next Thursday, but instead  
11 on January 2nd, and then on Friday January 3rd, we have  
12 another hearing?

13 MR. EVEN: Yes, your Honor.

14 THE COURT: What are Apple's thoughts about that?

15 MR. PERRY: That's perfectly acceptable to Apple,  
16 your Honor.

17 THE COURT: Okay. And that works for me, as well.  
18 So, the next status report won't be due on -- next week,  
19 instead it will be due on January 2nd, and then we will have  
20 another status conference, like this one, on Friday, January  
21 3rd. Does the 1:00 p.m. Pacific start time work for Epic?

22 MR. EVEN: It does, your Honor.

23 THE COURT: Does it work for Apple?

24 MR. PERRY: It does, your Honor.

25 THE COURT: All right. Well, thank you. Then we

1 will have the next hearing on Friday, January 3rd at 1:00  
2 p.m.

3 Is there anything else that Epic wanted to address at  
4 this hearing here today?

5 MR. EVEN: I don't believe so, your Honor. I  
6 think that all works for us.

7 THE COURT: Is there anything else that Apple  
8 wanted to address?

9 MR. PERRY: Nothing from Apple at this time, your  
10 Honor, other than to wish the Court and its staff happy  
11 holidays.

12 THE COURT: All right. Well, thank you for the  
13 report, Counsel, and we're adjourned for the day.

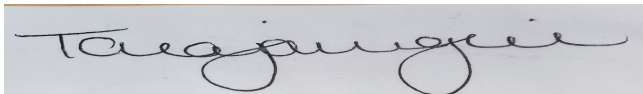
14 (Proceedings adjourned at 1:21 p.m.)  
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CERTIFICATE OF TRANSCRIBER

I certify that the foregoing is a true and correct transcript, to the best of my ability, of the above pages of the official electronic sound recording provided to me by the U.S. District Court, Northern District of California, of the proceedings taken on the date and time previously stated in the above matter.

I further certify that I am neither counsel for, related to, nor employed by any of the parties to the action in which this hearing was taken; and, further, that I am not financially nor otherwise interested in the outcome of the action.

A rectangular box containing a handwritten signature in cursive script, which appears to read "Tara Jungi".

Echo Reporting, Inc., Transcriber

Friday, December 27, 2024